



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FitzPatrick, Cella, Harper & Scinto
30 Rockefeller Plaza
New York, New York 10112-3800

COPY MAILED

DEC 30 2005

OFFICE OF PETITIONS

In re :
Larkin et al. :
Application No. 09/735,809 : RECONSIDERATION OF
Filing Date: Dec.14, 2000 : PATENT TERM ADJUSTMENT
Patent No. 6,888,566 :
Atty. Docket:169.1932

This decision is in response to applicants' REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d) timely¹ filed on June 22, 2005 requesting that the Office adjust the PTA at the time of the issuance of the patent from a determination of seven hundred and thirty-six (736) days to a determination of eight hundred and twenty-five (825) days.

Applicants' request for reconsideration of PTA determination at the time of the issuance of the patent is granted. The Office will adjust the PTA calculation to reflect a determination of eight hundred and twenty-five (825) days. The Office will also *sua sponte* issue a certificate of correction reflecting this decision.

Applicants assert that the Office erred in assessing an eighty-nine (89) day applicant delay for the submission of a "miscellaneous incoming letter" at the time of the mailing of the notice of allowance. Applicants assert that the reason for such submission is the examiner's failure to correctly identify the status of all claims in the application on the notice of allowability. Specifically, applicants noted that the examiner did not identify the status of claims 42-47 and applicant wanted the record to be clear that claims 42-47 were allowed in addition to claims 1-19. Applicants note that while comments on the notice of allowability is not specifically listed on the notice titled Clarification of 37 CFR 1.704(c)(10)-Reduction of Patent

¹Patent issued on May 3, 2005 as patent number 6,888,566 B2.

Term Adjustment for Certain Types of Papers filed After a Notice of Allowance has been Mailed 1247 OG 111 (June 26, 2001), the paper is not such that would cause interference and delay in issuance of the patent.

Applicants arguments are persuasive. The submission of a letter in response to the notice of allowability requesting that the examiner correctly list the status of all pending claims is not considered by the Office to be a failure to engage in reasonable efforts to conclude processing or examination of the application under 37 CFR 1.704(c)(10). Accordingly, the submission of such paper will not cause interference and delay in the patent issue process. Thus, the reduction of PTA by eighty-nine days will be removed and applicants did not engage in any failure to conclude prosecution of the application. Accordingly, the only delay is the Office delay in failing to meet the requirements of 37 CFR 1.702(a)(1) by a period of eight hundred and twenty-five days.²

After the mailing of this decision, the Office will forward this patented file to the certificate of correction branch for a prompt issuance of the certificate of correction.

The Office has assessed the \$200.00 fee ofr consideration of this request for reconsideration of PTA. No additional fees are required by applicants.

Any questions relating to this decision should be directed to Kery A. Fries at 571-272-7757.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

²The delay began on February 15, 2002 (day after 14-month deadline) and ended on May 19, 2004 (date of mailing of a restriction requirement).